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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JASON W. SANDBERG,

11 Plaintiff,

12 v.

13 SUPERINTENDENT RON VAN
14 BOENING, *et al.*,

15 Defendants.

CASE NO. C09-5347RJB/JRC

ORDER

16 This case has been referred to the undersigned Magistrate Judge pursuant to 28
17 U.S.C. §§ 636(b) (1) (A) and 636(b) (1) (B) and Local Magistrate Judge's Rules MJR 1, MJR 3,
18 and MJR 4. The matter is before the court on two motions filed by plaintiff. The first motion is a
19 motion for appointment of counsel, (Dkt. # 7). The second motion is a motion to amend the
20 complaint (Dkt. # 10).
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22 The motion for appointment of counsel is DENIED. There is no right to have
23 counsel appointed in cases brought under 42 U.S.C. § 1983. Although the court, under 28 U.S.C.
24 § 1915(e) (1), can request counsel to represent a party, the court may do so only in exceptional
25 circumstances. Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Franklin v.
26 Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984); Aldabe v. Aldabe, 616 F.2d 1089 (9th Cir. 1980).

1 A finding of exceptional circumstances requires an evaluation of both the likelihood of success
2 on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of the
3 complexity of the legal issues involved. Wilborn, 789 F.2d at 1331. Plaintiff's Motion to
4 Appoint Counsel (Dkt. # 7) is **DENIED**.

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6 Plaintiff has asked for opportunity to amend his complaint. (Dkt. # 10). This case is not
7 in a posture where the court can determine the likelihood of success on the merits. The motion to
8 amend the complaint is **GRANTED**. A plaintiff may amend his complaint once as a matter of
9 course. Fed. R. Civ. P. 15 (a). The amended complaint will act as a complete substitute for the
10 original. Plaintiff is reminded to provide a copy of the amended complaint and filled-out
11 Marshal's service form for each defendant if he wishes the Court to Order the Marshal's Service
12 to attempt to serve by mail. The amended complaint will be due on or before September 4, 2009.

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14 The Clerk's office is directed to remove the entry giving Mr. Sandberg until July 20,
15 2009, to file Marshal's forms and Dkt. entries 7 and 10 from the Court's calendar.

16 Dated this 4th day of August , 2009.

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18 /s/ J. Richard Creatura
19 J. Richard Creatura
20 United States Magistrate Judge
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